

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT-III
IB – 672/ND/2023

Order under Section 10 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. PUSHPA GOYAL ENTERPRISES PVT. LTD.

Having Its Registered Office at:

F-60, Bali Nagar, New Delhi-110015

CIN: U50102DL2007PTC167858

Through its Manager/ Authorized Signatory

Mr. Hemant Goyal

..... Corporate Applicant/Debtor

Order Pronounced On: 07.03.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES

For the Applicant : Mr. Vishisht and Ms. Pridhi Singla, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

1. This is an application filed by M/s. Pushpa Goyal Enterprises Private Limited, through its Manager Mr. Hemant Goyal, the Corporate Applicant under Section 10 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking to initiate Corporate Insolvency Resolution Process (CIRP).

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2. The Corporate Applicant was incorporated on 07.09.2007, under the provisions of the Companies Act, 1956 with the Registrar of Companies, Delhi. The Authorized Share Capital of the Corporate Applicant is Rs. 2,00,00,000/-. The Paid-up Share Capital of the Corporate Applicant is Rs. 45,39,990/-. The Corporate Applicant was primarily involved in the business of Dealership of Mahindra trucks and also maintained service stations for the repair of vehicles.
3. The Corporate Applicant has two directors - Smt. Pushpa Goyal and Sh. Amit Goyal as on the date of filing the present application.
4. The Corporate Applicant submits that owing to the slowdown, recession, demonetization and poorly implemented GST policy, the operations of Corporate Applicant were severely affected. Due to the following factors, the financial stability and revenue model of the Corporate Applicant took a huge hit eradicating any buffer reserve and capital and this has resulted in the Corporate Applicant not being able to generate revenue/profit.
5. The Corporate Applicant submits that the Income Tax Department, Ministry of Finance, Government of India initiated recovery under Section 156 of the Income Tax Act, 1961 and served the Corporate Applicant with a Notice of Demand dated 26.12.2019 and the Corporate Applicant as on 29.12.2019 owes an amount of Rs. 1,91,31,150/- to Income Tax Department, Ministry of Finance, Government of India.
6. The Corporate Applicant has not filed annual returns for the past two years and the company is also not carrying on operations since the year 2019.
7. The Corporate Applicant does not own any immovable or movable assets anywhere in India or abroad and as per the Balance Sheet ending 31.03.2023, the company has current and non-current assets, which are unsecured and considered doubtful. The Copy of the Statement of Affairs dated 10.10.2023 and the Copy of the Balance Sheet as on 30.09.2023 is attached with the present application.
8. The Corporate Applicant submits that the Board of Directors of the Corporate Applicant passed the special resolution dated 06.09.2023 to initiate the Corporate Insolvency Resolution Process, in hope of resolving the operational debt of the Corporate Applicant as the Corporate Applicant has been unable to pay its operational creditors.

9. Analysis and Findings

- i. We have heard the Ld. Counsel for the Corporate Applicant and perused the documents submitted by him.
- ii. This Adjudicating Authority on 25.01.2024 directed the Ld. Counsel to place on record the demand notice of Income Tax and the list of Operational Creditors. The relevant part of the Order is reproduced below:

“Learned Counsel seeks liberty to place on record the demand notice issued by the Income Tax Department with respect to the Corporate Applicant. Three days time granted. We may also record that on 02.11.2023, no one had appeared on behalf of the Applicant. On 28.11.2024, Proxy Counsel on behalf of the Corporate Debtor sought an adjournment on the ground that the main Counsel is not available. Today, Learned Counsel appearing for the Applicant sought time to place on record the additional documents. Three days granted. List the matter on 01.02.2024.”
- iii. On 01.02.2024, the Ld. Counsel appearing for the Applicant has submitted that the demand notice issued by the Income Tax Department with respect to the Corporate Applicant is already on record. He further submitted that he is not in a position to place on record the list of the Creditors as it runs into about 200 pages. The failure of Corporate Applicant to file the list of Creditors casts a doubt on the bona fide of the Applicant in filling the present application.
- iv. The Income Tax Department, Ministry of Finance, Government of India initiated recovery under Section 156 of the Income Tax Act, 1961 and served the Corporate Applicant with a Notice of Demand dated 26.12.2019 and the Corporate Applicant as on 29.12.2019 owes an amount of Rs. 1,91,31,150/- to Income Tax Department, Ministry of Finance, Government of India.
- v. We are of the considered view that although the Demand Notice was issued way back in 2019, the Corporate Applicant has filed the present application only on 28.10.2023, i.e., after 4 years. The demand of the Income Tax is due and the Corporate Applicant is not in a position to pay the tax. The Corporate Applicant has not made any case other than that the Corporate Applicant is not able to pay the tax and thus trying to evade the tax payment by filling the present application which is not tenable in law. Hence, we are inclined to **dismiss this application.**

10. **Order**

In light of the above facts and circumstances, it is ordered as follows:-

- i.** The Application bearing **IB-672/ND/2023** filed by the Corporate Applicant under under Section 10 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), in respect of M/s. Pushpa Goyal Enterprises Private Limited, the Corporate Applicant is **dismissed**.
- ii.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

-Sd-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-Sd-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**